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IN THE

SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1945

No. 572

JAMES LOUIS GIROUARD,

Petitioner,

vs.

THE UNITED STATES OF AMERICA

PETITION FOR WRIT OF CERTIORARI TO THE UNITED STATES CIRCUIT COURT OF APPEALS FOR THE FIRST CIRCUIT.

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James Louis Girouard, your petitioner, prays that a writ of certiorari be issued to review a judgment of the United States Circuit Court of Appeals for the First Circuit, reversing an order of the United States District Court for the District of Massachusetts.

Opinions Below

No opinion was rendered by the District Court. The opinion of the Circuit Court of Appeals (R. 26) and the dissenting opinion of Judge Woodbury (R. 32) are reported in 149 F. 2d 760.

Jurisdiction

The judgment of the Circuit Court of Appeals sought to be reviewed was entered June 1, 1945 (R. 40). By order of Mr. Justice Black August 27, 1945, the time within which to file petition for certiorari was extended to October 30, 1945 (R. 40). The jurisdiction of this Court is invoked under Section 240(a) of the Judicial Code as amended by the Act of February 13, 1925.

Question Presented

Whether, in view of amendments to the Nationality Act of 1940 expressly recognizing the right of conscientious objectors who have served in the armed forces to naturalization upon the taking of the oath prescribed by statute, while retaining religious scruples against bearing of arms—Whether the requirements of that same oath by implication debar from naturalization an alien who acknowledges the plenary authority of Congress to declare war, who reserves to himself no right to determine the rightness of war once Congress has spoken, and who acknowledges a duty as a citizen, and is willing, to serve in the armed forces of the United States in places of risk and the greatest danger as has been exemplified by thousands of his co-religionists but who is, by reason of religious scruples against the taking of human life, unwilling to bear arms.

Statutes Involved

The pertinent provisions of the Nationality Act of 1940 and amendments thereto are printed in the Appendix, p. 20.

Statement

The petitioner, a native of Canada, entered this country in 1923 and has resided here ever since (R. 5). On August

8, 1940, he filed a declaration of intention to become a citizen of the United States (R. 2) and on November 3, 1943, he filed in the United States District Court for the District of Massachusetts his petition for naturalization (R. 9).

Petitioner stated in the Preliminary Form for Petition for Naturalization filed by him January 26, 1943 (R. 4), that he understood the principles of the government of the United States, believed in its form of government and was willing to take the oath of allegiance in the following form (R. 7):

> "I hereby declare, on oath, that I absolutely and entirely renounce and abjure all allegiance and fidelity to any foreign prince, potentate, state, or sovereignty of whom or which I have heretofore been a subject or citizen; that I will support and defend the Constitution and laws of the United States of America against all enemies, foreign and domestic; that I will bear true faith and allegiance to the same; and that I take this obligation freely without any mental reservation or purpose of evasion: So help me God."

Question 26 in the Preliminary Form and the petitioner's answer thereto were (R. 7):

> "If necessary, are you willing to take up arms in defense of the country? No (Non-combatant) Seventh Day Adventist."

In sworn testimony before the Acting Naturalization Examiner on March 9, 1943, the petitioner explained the above answer to question 26 by saying (R. 19):

> "* * * it is purely a religious matter with me, I have no political or personal reasons other than that."

At a hearing held before the District Court on August 1, 1944 and on interrogation by the District Court Judge, the

petitioner testified that he was a member of the Seventh Day Adventist Denomination of whom approximately 10,000 were then serving in the armed forces of the United States as non-combatants, especially in the Medical Corps; and that he was willing to serve in the army but would not bear arms (R. 23).[1]

Disregarding the recommendation of the Naturalization Examiner that the petition be denied, the District Court on August 1, 1944, entered its order directing that the petitioner be admitted to citizenship (R. 14).

At the same term, on August 25, 1944, a representative of the United States Immigration and Naturalization Service filed a notice of exception (R. 18). From the order of Court admitting petitioner to citizenship, entered on August 1, 1944, the United States appealed (R. 22).

The opinion of the Circuit Court of Appeals held that the case is controlled by *United States* v. *Schwimmer*, 279 U. S. 644 (1929); *United States* v. *Macintosh*, 283 U. S. 605 (1931); *United States* v. *Bland*, 283 U. S. 636 (1931), and that under those decisions the statutory oath of allegiance can not be taken by a person who, while willing unqualifiedly to do all else in defense of the country including service in the military forces, is unwilling actually to bear arms in its defense (R. 28-32). The dissenting opinion of Judge Woodbury asserts that by the amendment of March 27, 1942, 56 Stat. 182, 183, Congress, although it did not change the section of the Nationality Act prescribing the

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[1] In an inquiry form transmitted November 3, 1943 by the Naturalization Service and returned by the clerk of the petitioner's draft board there appears the statement (R. 21): "* * * that in Series X, page 6, the registrant did claim exemption from combatant or noncombatant military service as a conscientious objector; that if he did so claim, he has filed with this Board a 'Special Form for Conscientious Objectors (Form 47) * * *.'" Due apparently to the equivocal form of this questionnaire and the failure of the Government to introduce Form 47, neither of the courts below referred to, or gave any weight to, this draft board return.

oath, nevertheless evidenced a change in the interpretation placed upon the oath by this Court (*In re Kinloch*, 53 F. Supp. 521 (W. D. Wash. 1944)) and the majority recognized that to give the amendment any meaning it must be interpreted as permitting conscientious objectors who are veterans to take the oath despite their religious scruples against bearing arms (R. 31-32). The dissenting opinion also points out that Congress should not be deemed to have intended to have the words of the same oath mean one thing to a conscientious objector who has served in the military forces and something else to one who is willing so to serve (R. 34). And the dissent concludes that the district court judgment should be affirmed on another ground as well: That the *Schwimmer*, *Macintosh* and *Bland* cases are no longer the law.

Accordingly the Circuit Court of Appeals by a 2-1 vote reversed the judgment of the district court (R. 40).

Specification of Errors to Be Urged

The Circuit Court of Appeals erred:

1. In holding that the oath of allegiance prescribed in the Nationality Act of 1940 as amended impliedly requires willingness to bear arms as a condition to naturalization.

2. In failing to hold that the 1942 amendments to the Nationality Act of 1940 negative any implied requirement of willingness to bear arms as a condition to naturalization.

3. In holding that the statutory requirements for naturalization were not satisfied because of petitioner's statement of his unwillingness to bear arms.

Reasons for Granting the Writ

1. The decision of the court below is probably in conflict with the decisions of this Court.—Although it relied upon the

decisions of this Court in *United States* v. *Schwimmer*, 279 U. S. 644; *United States* v. *Macintosh*, 283 U. S. 605; *United States* v. *Bland*, 283 U. S. 636, and purported to follow them, the court below has improperly extended those decisions beyond the precise questions therein decided and erroneously held that they control the instant case involving materially different facts. In those cases the statutory oath of allegiance required as a condition to naturalization was held to bar the applicants because statements in the preliminary forms for petition for naturalization and on hearing were deemed to indicate lack of ability, without unpermissible mental or written reservation, to take the required oath "to support and defend the Constitution and laws of the United States against all enemies, foreign and domestic * * *" and as well were deemed inadequate to satisfy that the applicant was "attached to the principles of the Constitution." Those cases, however, were decided on facts quite different from those presented in the instant case and involved applicants whose asserted rights of conscience if recognized would have imposed serious limitations on the war power of Congress and in effect and tendency constituted much greater threats to the untrammeled exercise of that power.

Here it merely appears that petitioner, because of his religious scruples against the taking of human life, is unwilling to bear arms in the technical sense of the word. So far as appears, he recognizes that under the war power, once Congress has spoken, its decision in making war is final and must, of necessity, be binding on all. He is willing to serve in the armed forces of the United States in whatever capacity may be required as have served thousands of his co-religionists. Petitioner asserts no right to question the moral rightness of any particular war, nor does he debate the finality and necessarily binding effect on him

of the decision of Congress. Neither does he seek to reserve to himself determination of the extent or manner in which he shall assist in the defense of the country; his willingness to support the Government in time of war is unequivocal. His sole limitation is that as a matter of religious belief he cannot take human life and in that sense cannot bear arms. As has been abundantly exemplified in the present war, the attitude of such persons in no way tends to influence others against the use of military force. On the contrary the history of this war has again established that in the medical corps, in the hospital corps, and in other branches of the military forces they have by their fearless conduct and indifference to danger in succor of others inspired and fortified all in the stress of battle.

The facts and reasoning in the cases cited by the court below (R. 28-30) make it plain that they have erroneously been held controlling in the instant case.

In *United States* v. *Schwimmer*, 279 U. S. 644, the court laid emphasis on the fact that "Whatever tends to lessen the willingness of citizens to discharge their duty to bear arms in the country's defense detracts from the strength and safety of the Government. * * * The influence of conscientious objectors against the use of military force in defense of the principles of our Government is apt to be more detrimental than their mere refusal to bear arms" (p. 651).

The decision turned upon the conclusion that the evidence as to the applicant "justifies belief that she may be opposed to the use of military force as contemplated by our Constitution and laws and her testimony clearly suggests that she is disposed to assert her power to influence others to such opposition" (p. 652). The scope of that opinion is also indicated by its specific reference (p. 652) to conscientious objectors in the last war "who were unwilling to

bear arms in that crisis and who refused to obey the laws of the United States and the lawful commands of its officers and encouraged such disobedience in others. * * * and * * * made claim because of conscience for *exemption from any form of military service* * * *." (Emphasis supplied.)

Plainly this Court there dealt with an applicant who not only had personal scruples of conscience against the taking of human life but who claimed a right to propagandize against and induce others to oppose use of force in defense of the country, and refused to recognize the "reciprocal obligation of the citizen to render military service," *Selective Draft Law Cases*, 245 U. S. 366, 378 (pp. 650, 652). No question of religious belief was involved.

In contrast, the applicant here, like his co-religionists, has emphasized a willingness to serve in the military forces so long as he is not compelled as a combatant to take human life and there is no showing of purpose or disposition on his part to influence others. The *Schwimmer* case thus falls far short of requiring denial of the application of the petitioner here involved.

In the case of *United States* v. *Macintosh*, 283 U. S. 605, the applicant had no religious scruples against the taking of human life or against bearing arms in defense of the country and he expressly stated that he was willing to bear arms (p. 617). There the disqualification rested upon the entirely distinct ground, not at all present here, that the applicant sought to reserve to himself the right to determine the moral justice of any war despite the decision of Congress. There the evidence as to the applicant showed, as this Court said (p. 619):

> "that he will not assist in the defense of the country by force of arms or give any war his moral support unless he believes it to be morally justified, however necessary the war might seem to the government of the

> day; that he will hold himself free to judge of the morality and necessity of the war, and while he does not anticipate engaging in propagandizing against the prosecution of a war declared and considered justified by the Government, he prefers to make no promise even as to that; and that he is convinced that the individual citizen should have the right to withhold his military services when his best moral judgment impels him to do so."

and this Court summarized the applicant's position (p. 624):

> "In fact, he offers to take the oath of allegiance only with the qualification that the question whether the war is necessary or morally justified must, so far as his support is concerned, be conclusively determined by reference to his opinion."

The case of *United States* v. *Bland*, 283 U. S. 636, proceeded on substantially the same facts and grounds. As the court said (p. 636):

> "The only difference between the position she (Bland) took, and that taken by the respondent in the *Macintosh* case, is that in addition to refusing positively to bear arms in defense of the United States under any circumstances, she required an actual amendment of the oath as already stated. As was said in the *Macintosh* case, this is a circumstance which has no distinguishing effect."

Obviously, there is nothing in the record that brings the instant petition within the *Macintosh* or *Bland* cases. Petitioner has indicated not the slightest hesitation to accept the expressed will of the Government nor a lack of willingness at all times to support and defend the Government and in every way to further, and in no way hinder, by propaganda or otherwise, the successful prosecution of war, whether he be within or without the armed forces of the nation, save that he will not actually bear arms as a com-

batant since that would necessarily involve obligation to take human life.[2]

Thus the cases relied on by the court below offered no basis for denial of naturalization to petitioner. On the contrary, they indicated that a mere religious scruple against bearing arms standing alone is not to be regarded as presenting an insurmountable barrier. One who, subject to his religious inhibition against taking human life, recognizes the plenary authority of Congress under the war power and reserves no right to hinder or impair any exercise of that power but is ready to risk his life in the military forces and in other ways to uphold the hands of the authorities surely is not to be classed with those who would subvert the defense of the Government upon their own judgment that a war is morally unjustified.

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[2] The non-combatant position of the Seventh Day Adventist Denomination has often been grossly misunderstood. This position is not anti-militarism, it is not pacifism, it is not conscientious objection to war as an instrument of governmental policy as that is ordinarily understood. Seventh Day Adventists do not condemn those who take part in war. On the contrary, as non-combatants they recognize, and have been outstanding in performance of, their duty to aid their government in every way in time of warfare, except by taking human life. They have donned the uniform of the soldier and except for actual bearing of arms have performed all the duties of soldiers. Even under fire, they have helped fortify positions; so also have they been foremost, often under fire, in rendering medical aid to the wounded and sick; and have been constant in all measures to protect human life. They have buried the dead, transported men and supplies; and, in aid of the war effort, have labored in the factories, the munitions plants, the mines, and the fields wherever the defense of the nation could best be served. The non-combatant is not a coward; he simply conscientiously and courageously objects to affirmative participation in the taking of human life; he dares, however, to assume any military risk necessary to save life.

[1] A Seventh Day Adventist non-combatant does not agitate against war. He recognizes that war is many times unavoidable in the preservation of the State. He does not arrogate to himself the prerogative of deciding whether the government is right or wrong in entering upon a war. He merely maintains an attitude and a conviction that war, whether right or wrong, whether justified or unjustified, whether of aggression or of defense, does not change his obligation of obedience to God.

Indeed, the language of the *Schwimmer* and *Macintosh* opinions, aside from the distinctions pointed out above, by inference strongly indicates that one who is willing to serve in the armed forces, although as a non-combatant, and there assume the risk of death in defense of the country, is not to be deemed lacking in the statutory qualifications for naturalization. The *Schwimmer* opinion cites as examples to be avoided those who "made claim because of conscience for exemption from any form of military service." The *Macintosh* case proceeds directly upon the ground, in part at least, that the applicant refused to recognize a duty to assume the risk of military service in defense of the country. The court there said (p. 624):

> "In *Jacobson* v. *Massachusetts*, 197 U. S. 11, 29, the court speaking of the liberties guaranteed to the individual by the Fourteenth Amendment said:
>
> > "* * * and yet he may be compelled by force if need be, against his will and without regard to his personal wishes or his pecuniary interests, or even his religious or political convictions, to take his place in the ranks of the army of his country and risk the chance of being shot down in its defense.
>
> The applicant for naturalization here is unwilling to become a citizen with this understanding."

Here there is no question of petitioner's willingness to assume all the risks of a soldier in the contingency of war.[3]

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[3] In *In re Kimloch*, 53 F. Supp. 521, referring to the duties of a member of the Seventh Day Adventist Denomination as a non-combatant in the medical corps, the court said (pp. 522-523):

> "The commanding officer of the unit to which these applicants were attached was present in court, and testified that such unit was composed almost entirely of soldiers who qualified for combat service. He further testified that no distinction whatever was made as between these two applicants and other members of the unit, in the training,

2. **The basic premise upon which are based the decisions of this Court relied on below has been invalidated by subsequent legislation of Congress.**—Even if the *Schwimmer* and *Macintosh* cases be regarded as otherwise applicable, it is submitted that amendments to the Nationality Act in 1942 have vitiated their controlling effect. Admittedly the requirement of willingness to bear arms as a condition to the grant of naturalization is not specific either in the Naturalization Act of 1906 involved in the *Schwimmer* and *Macintosh* cases or in the substantially identical provisions

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qualifying, equipping, responsibilities and duties assigned to them. It was further made clear to the court that these applicants, as members of a medical unit, were required to and did take the basic training provided for such unit, and in all respects were soldiers assigned for duty in a medical unit of the Army in time of war.

"The court was further advised that by the terms of the Geneva Conference, officers and men who are a part of, and attached to hospital and medical units are prohibited from bearing arms.

"The evidence disclosed that the hazards incident to service in a detachment such as the applicants belonged to are equal to those of the combat units, since their duties require them in time of battle to be at the front lines, under fire, in order that they may expeditiously and effectively care for their companions who are casualties, and that the same high degree of valor and courage demanded of soldiers who are a part of the combat forces and bear arms is required of them in the discharge of their duties as soldiers.

. . . . . .

"The Selective Training and Service Act permitted all registrants thereunder to be classified for service as follows:

"1. General combatant service.

"2. Non-combatant service.

"3. Work of civilian importance in camps.

"Those who were inducted and classified as 1AO were required to take the oath of a soldier, to live the life of a soldier, to wear the uniform, to assume all the hazards and responsibilities of a soldier, except to bear arms, as well as have the rights and privileges of a soldier, both during the period of service and after honorable discharge."

of the Nationality Act of 1940 here pertinent which supplanted it (App'x, p. 20).[4]

The pertinent portions of the Naturalization Act of 1906, Section 4, subdivisions Third, and Fourth, 34 Stat. 596, 597-598, merely prescribed that:

(1) The applicant shall declare on oath

> "that he will support and defend the Constitution and laws of the United States against all enemies, foreign and domestic, and bear true faith and allegiance to the same."

(2) It shall be made to appear that for at least five years preceding the application—

> "he has behaved as a man of good moral character, attached to the principles of the Constitution of the United States and well disposed to the good order and happiness of the same."

Taken together, the *Schwimmer* and the *Macintosh* cases proceed on the basic premise that the prescribed oath and required showing that the applicant is "attached to the principles of the Constitution" *implicitly* require assur-

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[4] Sec. 504 of the Nationality Act of 1940, Act of October 14, 1940, c. 876, 54 Stat. 1137, 1172, "to revise and codify the nationality laws of the United States into a comprehensive nationality code" repealed the pertinent portions of Section 4 of the Naturalization Act of 1906; but in prescribing the content of the oath of allegiance the Nationality Act of 1940, sec. 335(a) (8 U. S. C. sec. 735(a)) in substance reenacted Section 4 (Third) of the Naturalization Act of 1906, 34 Stat. 596, 597-598, and the Nationality Act of 1940 in specifying for the first time the precise wording of the oath, Section 335(b) (8 U. S. C. Sec. 735(b)) adopted the language theretofore prescribed by administrative regulation of the Bureau of Naturalization. The requirement as to showing that the applicant is "of good moral character, attached to the principles of the Constitution of the United States, and well disposed to the good order and happiness of the United States" (Sec. 307(a) of the Nationality Act of 1940; 8 U. S. C. Sec. 707(a)) was taken almost verbatim from Section 4 (Fourth) of the Naturalization Act of 1906, 34 Stat. 596. The statutory language under consideration in the *Schwimmer* and *Macintosh* cases is in substance identical with that involved in the instant case.

ance of willingness to bear arms. The four-judge dissent written by Mr. Chief Justice Hughes in the *Macintosh* case carefully stated the precise question presented and went on the ground that neither the oath nor the required showing of attachment to the principles of the Constitution demands the implication attached to it by the majority opinion (283 U. S. 627, 629, 635).

The Congress by amendment in 1942 of the Nationality Act of 1940 has now made clear the correctness of the dissenting opinion and has confirmed that the statute requiring the oath and the showing of attachment to the principles of the Constitution does not by implication bar an alien applicant willing to serve in the military forces but retaining religious scruples against taking human life or bearing arms. By those amendments Congress twice in 1942 expressly recognized the eligibility for citizenship under the general law of one thus unwilling to bear arms in defense of the country. In the Second War Powers Act, March 27, 1942, c. 199, Sec. 1001, 56 Stat. 176, 182-183, the Nationality Act was amended to add a new Title III. Section 701 thereof with respect to aliens who served in the United States military or naval forces during World War II eliminates the requirements as to declaration of intention, period of residence, command of the English language, handwriting of signature, and fees (8 U. S. C. Supp. IV, sec. 1001; see App'x, p. 21).

Significantly, Section 704, part of the new Title III and added at the same time by the same section of the Second War Powers Act, provides (8 U. S. C. Supp. IV sec. 1004; see App'x p. 21):

> "The provisions of this title shall not apply to . . . (2) any conscientious objector who performed no military duty whatever or refused to wear the uniform . . ."

These amendments to the Nationality Act were accompanied by no amendment of Section 307 or of Section 335 of the Nationality Act of 1940 here under scrutiny and requiring attachment to the principles of the Constitution and prescribing the oath, respectively.

The necessary inference is that Congress intends that the oath of allegiance (Section 335) may be taken and the statutory showing of attachment to the principles of the Constitution (Section 307) may be satisfied despite refusal of applicants to state a willingness to bear arms. To hold the contrary would be to nullify the amendment. *In re Kinloch*, 53 F. Supp. 521, 523 (W. D. Wash. 1944); *In re Sawyer*, 59 F. Supp. 428 (Del. 1945). In these cases the court expressly overruled the contention of the United States that the applicants could not take the oath of allegiance because of their continuing religious convictions against bearing arms.

The interpretation by Congress of the statutory oath as not requiring willingness to bear arms is thus clear. And this same congressional purpose and interpretation was re-emphasized by the similar Act of December 7, 1942, c. 690, 56 Stat. 1041, adding Section 323a to the Nationality Act (8 U. S. C. Supp. IV sec. 723a; App'x, pp. 21-22). It too dispenses with certain of the ordinary prerequisites for naturalization as to a person who was a member of the military or naval forces during the Spanish-American War, the 1916-1917 Mexican Border troubles, or during World War I—

> "who is not an alien ineligible to citizenship, * * * who was not a conscientious objector who performed no military duty whatever or refused to wear the uniform * * *."

The obvious conclusion is that Congress thereby again recognized that despite his refusal to bear arms a con-

scientious objector satisfying the other conditions of the statute may properly take the oath of allegiance and be deemed to satisfy the requirements as to attachment to the principles of the Constitution.

True, petitioner cannot take advantage of the special provisions of these two amendments since he has never served in the armed forces. But he does not invoke those sections directly.

The important feature of the 1942 legislation is that Congress, without abrogation or modification of the statutory requirements as to oath and attachment to the principles of the Constitution has expressly recognized that such requirements may be fulfilled by an otherwise qualified alien applicant despite his religious conviction against bearing arms.

The majority opinion of the court below holds that a special dispensation as to the oath was by the 1942 amendment extended to the defined class despite the fact that such dispensation was not included among those specifically granted. Aside from the general rule of *expressio unius*, on principle the attempted reconcilement is invalid. As stated by Judge Woodbury in his dissent (R. 34):

> "The interpretation placed upon this amendment by my associates seems to me to accord to Congress an intention to have the words of the oath mean one thing to a person who is willing to serve and has served in the military forces to the extent permitted by his scruples, and something else to one equally willing to serve but who for reasons of age, sex, dependency or physical unfitness has not been called upon or permitted to do so. I think Congress must have intended the words of the oath to mean the same thing to one who has served in the military or naval forces as they do to one who has not."

Congress by the 1942 amendments has made it clear that the sections of the Nationality Act here in question and

their practically identical forerunners upon which the decisions in the *Schwimmer* and *Macintosh* cases were posited are not to be regarded as impliedly requiring as a condition of naturalization declaration by the applicant of willingness to bear arms. The scope of the intent attributed to Congress by the four dissenting judges in the *Macintosh* case, insofar, at least, as that decision may properly be regarded as controlling here, is confirmed. The question presented therefore requires reconsideration by this Court.

3. **The question of construction of the statute here involved is of great public importance and one which will frequently recur.**—In neither *United States* v. *Schwimmer*, 279 U. S. 644, nor *United States* v. *Macintosh*, 283 U. S. 605, was the decision unanimous. The dissent of Mr. Justice Holmes, Mr. Justice Brandeis and Mr. Justice Sanford in the first cited case and of Mr. Chief Justice Hughes, Mr. Justice Holmes, Mr. Justice Brandeis and Mr. Justice Stone in the *Macintosh* case recognize the broad importance of the issue and clearly indicate the finely balanced nature of the question even prior to the amendments more clearly disclosing congressional purpose. While the binding effect of these decisions has been unquestioned, comment has been preponderantly adverse with respect both to the *Schwimmer* case (see Notes (1929) 7 N. Y. U. L. Q. Rev. 157-159, (1930) 3 So. Calif. L. Rev. 224-225, (1929) 16 Va. L. Rev. 169-174; (1929) 9 B. U. L. Rev. 263-265, (1930) 5 Ind. L. J. 521-522, (1930) 28 Mich. L. Rev. 445) and to the *Macintosh* case (Kenneth Sears, Ernst Freund, Frederick Green, *United States* v. *Macintosh—A Symposium, Parts II-IV* (1931) 26 Ill. L. Rev. 375, 382-396; Note (1932) 16 Marq. L. Rev. 133-135; (1931) 11 B. U. L. Rev. 532, (1932) 2 Idaho L. J. 54). The validity of the reasoning of these cases is not unquestioned even now. See *In re Lasey*, 39 F. Supp. 37, 38 (E. D. Wash. 1941); and dissent in the instant case (R. 38-39).

The Seventh Day Adventist Denomination and other religious groups representing an appreciable and highly regarded segment of the population have thus been held to entertain beliefs which bar aliens from admission to citizenship. Nevertheless members of these groups have in their service in the Medical Corps of the Army and in the Hospital Corps of the Navy made a record of intrepid devotion to duty that is unexcelled.[5]

A number of cases have dealt with the question of the necessity of willingness to bear arms only insofar as aliens who have thus served in the armed forces are concerned, but they raise a preliminary question involved in the present case, *In re Nielsen*, 60 F. Supp. 240 (Dist of Col., 1945); *In re Sawyer*, 59 F. Supp. 428 (Del. 1945); *In re Kinloch*, 53 F. Supp. 521 (W. D. Wash. 1944). Because the question of the duty to bear arms is so recurrent in the naturalization of hundreds of aliens many of whom will have the highest claim for favorable consideration, this Court should now consider the effect of the 1942 legislation to reach an early and authoritative determination of the interpretation properly to be given to Sections 307(a) and 335 of the Nationality Act of 1940.

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[5] Individual deeds of unusual heroism in our wars, particularly in World War II, have not been confined to combatants. Noncombatants too have performed acts of valor beyond the call of duty. For example, Private Desmond T. Doss, Lynchburg, Virginia, a member of the Seventh Day Adventist Church, won the Congressional Medal of Honor while serving in the Medical Corps of the Army during World War II. The award was made for courage in aiding wounded comrades during the fight on Okinawa, the citation reading that the medal holder's name "became a symbol for outstanding gallantry throughout the Seventy-seventh Infantry Division."

Conclusion

It is submitted that this petition for writ of certiorari should be granted.

Respectfully,

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APPENDIX

The Nationality Act of 1940, October 14, 1940, c. 876, 54 Stat. 1137, 1142, 1157, provides:

> Sec. 307. (a) No person, except as hereinafter provided in this Act, shall be naturalized unless such petitioner, (1) immediately preceding the date of filing petition for naturalization has resided continuously within the United States for at least five years and within the State in which the petitioner resided at the time of filing the petition for at least six months, (2) has resided continuously within the United States from the date of the petition up to the time of admission to citizenship, and (3) during all the periods referred to in this subsection has been and still is a person of good moral character, attached to the principles of the Constitution of the United States, and well disposed to the good order and happiness of the United States [8 U. S. C. sec. 707(a)].
>
> Sec. 335. (a) A person who has petitioned for naturalization shall, before being admitted to citizenship, take an oath in open court * * * (3) to support and defend the Constitution and the laws of the United States against all enemies, foreign and domestic, and (4) to bear true faith and allegiance to the same * * *
>
> (b) The oath prescribed by subsection (a) of this section which the petitioner for naturalization is required to take, shall be in the following form:
>
> I hereby declare, on oath, that I absolutely and entirely renounce and abjure all allegiance and fidelity to any foreign prince, potentate, state, or sovereignty of whom or which I have heretofore been a subject or citizen; that I will support and defend the Constitution and laws of the United States of America against all enemies, foreign and domestic; that I will bear true faith and allegiance to the same; and that I take this obligation freely without any mental reservation or purpose of evasion: So help me God. In acknowledgment whereof I have hereunto affixed my signature * * * [8 U. S. C. sec. 735].

The Second War Powers Act, March 27, 1942, c. 199, sec. 1001, 56 Stat. 176, 182-183, amended the Nationality Act of 1940 by adding a new Title III including the following sections here pertinent:

> Sec. 701. Notwithstanding the provisions of sections 303 and 326 of this Act, any person not a citizen, regardless of age, who has served or hereafter serves honorably in the military or naval forces of the United States during the present war and who, having been lawfully admitted to the United States, including its territories and possessions, shall have been at the time of his enlistment or induction a resident thereof, may be naturalized upon compliance with all the requirements of the naturalization laws except that (1) no declaration of intention and no period of residence within the United States or any State shall be required; (2) the petition for naturalization may be filed in any court having naturalization jurisdiction regardless of the residence of the petitioner; (3) the petitioner shall not be required to speak the English language, sign his petition in his own handwriting, or meet an educational test; and (4) no fee shall be charged or collected for making, filing, or docketing the petition for naturalization, or for the final hearing thereon, or for the certification of naturalization, if issued * * * [8 U. S. C. Supp. IV sec. 1001].
>
> Sec. 704. The provisions of this title shall not apply to * * * (2) any conscientious objector who performed no military duty whatever or refused to wear the uniform * * * [8 U. S. C. Supp. IV sec. 1004].

The Act of December 7, 1942, c. 690, 56 Stat. 1041 amended the Nationality Act of 1940 by adding a new section 323a:

> A person who was a member of the military or naval forces of the United States at any time after April 5, 1917, and before November 12, 1918, or at any time after April 20, 1898, and before July 5, 1902, or who served on the Mexican Border as a member of the regular Army or National Guard from June 1916, to April 1917, who is not an alien ineligible to citizenship, who

was not at any time during such period or thereafter separated from such forces under other than honorable conditions, *who was not a conscientious objector who performed no military duty whatever or refused to wear the uniform,* and who was not at any time during such period or thereafter discharged from the military or naval forces on account of his alienage, shall, if he has resided in the United States continuously for at least two years pursuant to a legal admission for permanent residence in lieu of the usual five years' residence within the United States and six months' residence within the State of his residence at the time of filing the petition for naturalization, during all of which two-year period he has behaved as a person of good moral character, be entitled at any time within one year after the date of approval of this Act to naturalization upon compliance with all of the requirements of the naturalization laws, except that—

(1) no declaration of intention shall be required;

(2) no certificate of arrival shall be required unless such person's admission to the United States was subsequent to March 3, 1924; and

(3) no residence within the jurisdiction of the court shall be required.

Such petitioner shall verify his petition for naturalization by the affidavits of at least two credible witnesses who are citizens of the United States, or shall furnish the depositions of two such witnesses made in accordance with the requirements of subsection (e) of section 327 of the Nationality Act of 1940, to prove the required residence, good moral character, attachment to the principles of the Constitution of the United States, and favorable disposition toward the good order and happiness of the United States. On applications filed for any benefits under this Act, the requirement of fees for naturalization documents is hereby waived. (Emphasis supplied:) [8 U. S. C. Supp. IV sec. 723a]